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HODGKINSON STREET MEPHAM LLC  
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Portland, Oregon 97205  
Telephone: (503) 222-1143  
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Of Attorneys for Defendant City of West Linn

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

TROY BUZALSKY, an individual; and  
KATHY BUZALSKY, an individual,

Plaintiffs,

v.

CITY OF WEST LINN,

Defendant.

Case No.: 3:24-CV-710

**DEFENDANT CITY OF WEST LINN'S  
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441,  
and 1446 (Federal Question)

Clackamas County Case No. 24CV14114

**TO: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON;  
CLERK OF THE CLACKAMAS COUNTY CIRCUIT COURT; AND DANIEL  
T. GOLDSTEIN AND CHRISTOPHER C. GRADY AND ALDRICH  
GOLDSTEIN, P.C., ATTORNEYS FOR PLAINTIFFS:**

PLEASE TAKE NOTICE that defendant City of West Linn (hereinafter “defendant”) hereby removes this case, currently pending in the Circuit Court for the County of Clackamas, to the United States District Court for the District of Oregon, Portland Division. As grounds for removal, defendant respectfully states the following:

**BACKGROUND, RELEVANT FACTS AND TIMELINESS**

Plaintiffs Troy Buzalsky and Kathy Buzalsky (hereinafter “plaintiffs”) commenced this action in the Clackamas County Circuit Court. On March 29, 2024, defendant was served with a Summons and Complaint captioned *Troy Buzalsky, an individual; and Kathy Buzalsky, an individual v. City of West Linn, an Oregon municipality*, Clackamas County Circuit Court Case

No. 24CV14114. *See* Exhibit 1, p. 11 – Proof of Service. Pursuant to 28 U.S.C. § 1446(a), copies of “all process, pleadings, and orders” delivered to defendant are attached as Exhibit 1.

The Complaint contains allegations relating to defendant’s purported inverse condemnation of plaintiffs’ property in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, section 18 of the Oregon Constitution. Exhibit 1, p. 7, ¶ 25 – Compl. Plaintiffs’ Complaint also contains allegations of nuisance and negligence related to plaintiffs’ inverse condemnation claims. *Id.* ¶¶ 28-32 and 33-36.

This Notice of Removal is timely under 28 U.S.C. §1446(b) because it is filed within 30 days of plaintiff’s purported service of defendants on March 29, 2024.

### VENUE AND JURISDICTION

Jurisdiction is proper in this court under 28 U.S.C. §§ 117, 1441(a), and 1446(a) because the Circuit Court of the State of Oregon for Clackamas County, where the Complaint was filed, is a state court within the District of Oregon. Pursuant to 28 U.S.C. § 1446(a), this matter is to be removed to the district court of the United States for the district and division within which the state court action is pending. By filing this pleading, this defendant does not waive its right to assert any defenses or file any motions, including, but not limited to, motions based on improper, incorrect, or inconvenient venue.

This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 because plaintiffs’ Complaint arises under the Fifth and Fourteenth Amendments to the United States Constitution. This Court has supplemental jurisdiction over the subject matter of this action under 28 U.S.C. § 1367(a) because plaintiff’s claims arising under state law are so related to the claims in this action within this Court’s original jurisdiction that “they form part of the same case or controversy under Article III of the United States Constitution.”

### PROCEDURAL REQUIREMENTS

1. Removal to Proper Court: The action is removable to this Court because this district embraces Clackamas County, Oregon, where the State Court Action is now pending.

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2. Removal is Timely: Defendant City of West Linn was served with the Summons and Complaint on March 29, 2024. Exhibit 1, p. 11 – Proof of Service. This Notice of Removal, filed on April 26, 2024 is within 30 days of service of Plaintiffs’ Complaint. Therefore, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely. *See Murphy Bros. Inc. v. Michetti Pope Stringing Inc.*, 526 U.S. 344, 347-48, 119 S.Ct. 1322, 143 L.Ed.2d 448 (1999) (“[W]e hold that a named defendant’s time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, ‘through service or otherwise,’ after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service.”). Removal is proper based upon federal question jurisdiction and supplemental jurisdiction, and therefore the requirements of 28 U.S.C. §§ 1331, 1367, 1441(a), and 1446 are met, and the entire case may be removed to this Court.

3. Pleadings and Process: Attached as Exhibit 1 is a copy of all process, pleadings, and orders received by defendant concerning the State Court Action. *See* 28 U.S.C. 1446(a). No further proceedings have occurred in the Circuit Court of the State of Oregon for Clackamas County as of the date of this removal.

4. Notice: A copy of the Notice to Clackamas County Circuit Court Clerk and Adverse Party of Filing of Removal to Federal Court will be timely filed with the clerk of the state court in which the action is pending and served on plaintiffs pursuant to 28 U.S.C. § 1446(a) and (d). Attached as Exhibit 2.

5. Consent: Defendant City of West Linn is the only defendant in this matter.

6. Signature: This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See* 28 U.S.C. § 1446(a).

Based upon the foregoing, this Court has jurisdiction over this matter pursuant to 28 U.S.C §§ 1331 and 1367, and the claims may be removed to this Court under 28 U.S.C. §§ 1441, and 1446.

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In the event that plaintiffs seek to remand this case, or the Court considers remand *sua sponte*, defendant respectfully request the opportunity to submit such additional argument or evidence in support of removal as may be necessary.

Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of defendant's right to assert any motion or defense. Defendant reserves the right to assert all applicable claims and defenses in response to the Complaint, including but not limited to, defenses based on lack of personal jurisdiction, improper venue, incorrect venue, inconvenient venue/forum *non conveniens*, statute of limitations, contractual damage limitations, failure to state a claim upon which relief may be granted, or any other motions or defenses that may be available to this defendant.

Defendant hereby demands a trial by jury in the above-captioned action of all issues triable by jury.

WHEREFORE, defendant City of West Linn removes this action from the Circuit Court for the State of Oregon, for the County of Clackamas, to the United States District Court for the District of Oregon, Portland Division.

DATED: April 26, 2024.

HODGKINSON STREET, LLC

By: /s/ Ramon B. Henderson III

Ramon B. Henderson III, OSB No. 183579

rh@hs-legal.com

(503) 222-1143

(503) 222-1296 (fax)

*Of Attorneys for Defendant City of West Linn*

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

TROY BUZALSKY, an individual; and KATHY  
BUZALSKY, an individual,

Plaintiffs,

v.

CITY OF WEST LINN, an Oregon municipality,

Defendant.

Case No.

COMPLAINT

(Inverse Condemnation; Nuisance;  
Negligence)

NOT SUBJECT TO MANDATORY  
ARBITRATION

Amount in Controversy: \$600,000

Fee Authority: ORS 21.160(1)(c)

JURY TRIAL REQUESTED

Plaintiffs allege as follows:

1.

Troy Buzalsky and Kathy Buzalsky are husband and wife (“Owners”) and residents of Clackamas County, Oregon and owners of real property located at 1228 14<sup>th</sup> Street, in West Linn, Clackamas County, Oregon (the “Property”).

2.

The Property is located in the Willamette Neighborhood of West Linn, Oregon, between the I-205 and the Tualatin River. The Willamette Neighborhood generally slopes downhill from the I-205 toward the Tualatin River. The Owners’ Property is located at the bottom of the sloped Willamette Neighborhood and above the Willamette River.

3.

At all times material herein, Defendant City of West Linn (“City”) was an Oregon municipality duly organized and existing under the laws of the state of Oregon. The City is primarily

1 responsible for surface water management, street maintenance and street repair throughout the  
2 Willamette Neighborhood. The City is also the owner of a drainage pipe and other right-of-way  
3 improvements located on or about 14<sup>th</sup> Street just upslope from the Owners' Property (the "City's  
4 Drainage System on 14<sup>th</sup> Street"). The City's Drainage System on 14<sup>th</sup> Street discharges surface  
5 stormwater collected from the Willamette Neighborhood.

6 4.

7 The Owners' next-door neighbor (the "Neighbor") lived upslope from the Owners and  
8 adjacent to 14<sup>th</sup> Street. The Neighbor applied for a permit to partition his property into two lots. The  
9 City approved the Neighbor's permit application. As a condition of the approval, the City required  
10 the Neighbor to install and repair a sidewalk and gutter on part of the City's Drainage System on 14<sup>th</sup>  
11 Street.

12 5.

13 Prior to the Neighbor's project, surface water was directed to a ditch across 14<sup>th</sup> Street from  
14 the Owners' Property. However, as the contractor performed the work on the City's Drainage System  
15 on 14<sup>th</sup> Street as required by the City, the work began redirecting a large volume of surface water  
16 directly onto the Owners' Property.

17 6.

18 The Owners immediately warned the assistant engineer for the City's Public Works  
19 Department that water was now being redirected onto the Owners' Property. The City's engineer  
20 informed the Owners that the City had no plans to perform any repairs to 14<sup>th</sup> street to address the  
21 new and large volume of surface water from flowing onto the Owners' Property. The City  
22 representative informed the Owners that repairs to 14<sup>th</sup> Street were not a priority for the City in the  
23 foreseeable future. The City took no action in response to the Owner's warning about water intrusion  
24 onto Owners' Property.

25 ///

Page 2 – COMPLAINT

ALDRICH GOLDSTEIN, P.C.  
621 SW Morrison Street, Suite 1050  
Portland OR 97205  
Telephone: (503) 226-7045  
Fax: (503) 226-7046

1 7.

2 As the work continued on the City's Drainage System on 14<sup>th</sup> Street, the newly redirected  
3 water onto Owners' Property increased in volume. The Owner met with the City's right-of-way  
4 inspector during an inspection of the work on the City's Drainage System on 14<sup>th</sup> Street. The City's  
5 inspector agreed with the Owner that the project, as planned and required by the City, would not  
6 adequately protect the Owners' Property from the newly redirected surface water. However, the City  
7 took no action to prevent the new and large volume of surface water from discharging from the  
8 City's Drainage System on 14<sup>th</sup> Street and onto the Owners' Property.

9 8.

10 The Neighbor's contractor was also present for this meeting between the Owner and the  
11 City's right-of-way inspector. The Neighbor's contractor warned the City that even more surface  
12 water would soon be redirected from the City's Drainage System on 14<sup>th</sup> Street and onto the Owners'  
13 Property. The Neighbor's contractor stated that there was a broken and/or disconnected drainage pipe  
14 in the City's Drainage System on 14<sup>th</sup> Street. The Neighbor's contractor warned the City that the  
15 drainage pipe in the City's Drainage System on 14<sup>th</sup> Street would discharge even more surface water  
16 onto the Owners' Property if the drainage pipe was repaired.

17 9.

18 On or about May 9, 2022, the Owners hand-delivered a thumb drive to the City – and  
19 contemporaneously sent a Dropbox link to the City – containing photos and video demonstrating the  
20 Owners' concerns about excessive surface water discharging from the City's Drainage System on  
21 14<sup>th</sup> Street and onto the Owners' Property. The City received this communication before the broken  
22 and/or disconnected drainage pipe was repaired in the City's Drainage System on 14<sup>th</sup> Street. The  
23 Owners' communications to the City provided the City with a detailed description of the historical  
24 management of the surface water near the Owners' Property and how the work being performed on  
25 the City's Drainage System on 14<sup>th</sup> Street had now changed that historical flow, redirecting a large

1 and harmful volume of surface water onto the Owners' Property.

2 10.

3 The City ignored the warnings given by the Owners and Neighbor's contractor. Instead, the  
4 City responded by offering the Owners sand and sand bags and took the position that surface water  
5 management was the Owners' responsibility. The City inspected and approved all work to the City's  
6 Drainage System on 14<sup>th</sup> Street with full knowledge that such approved work would newly discharge  
7 a large volume of water onto the Owners' Property.

8 11.

9 In June 2022, heavy rains began again in the Willamette Neighborhood. Surface water from  
10 the City's Drainage System on 14<sup>th</sup> Street discharged onto the Owners' Property as expected. Again,  
11 the Owners informed the City of the large volume of surface water discharging onto the Owners'  
12 Property from the City's Drainage System on 14<sup>th</sup> Street. On June 10, 2022, The Owners provided  
13 the City's Director of Public Works with an email that included additional photos and videos  
14 documenting the damage to the Owners' Property as a result of the discharge of water from the  
15 City's Drainage System on 14<sup>th</sup> Street. The Owner also suggested that the City mitigate its damages  
16 by installing an asphalt berm. The City had previously installed asphalt berms throughout the City to  
17 manage surface water drainage.

18 12.

19 The City's Public Works Director performed an investigation and provided a written  
20 response to the Owners once again offering free sand and sandbags. The City's Public Works  
21 Director confirmed that the City staff inspected and approved the work performed by the Neighbor's  
22 contractor on the City's Drainage System on 14<sup>th</sup> Street, which was also mandated by the City when  
23 approving the Neighbor's permit.

24 ///

25 ///



13.

However, the City's Public Works Director disclaimed any responsibility on the City's part for the newly directed surface water discharging from the City's Drainage System on 14<sup>th</sup> Street and onto the Owners' Property. Instead, the City's Public Works Director claimed that either the Owners or Neighbor were responsible for the management of the surface water discharging from City's Drainage System on 14<sup>th</sup> Street. The City's Public Works Director further stated that the City would not install an asphalt berm to control the excess surface water discharging onto the Owners' Property from the City's Drainage System on 14<sup>th</sup> Street. According to the City's Public Works Director, asphalt berms were not effective for management and drainage of surface water. The City's Public Works Director also confirmed that the City could have mandated that the Neighbor perform more comprehensive changes to the City's Drainage System on 14<sup>th</sup> Street, but chose not to mandate such changes.

14.

In addition to the actions above, the City also required the Neighbor's contractor to re-direct the flow of a drainage pipe uphill from the driveway to the Neighbor's property, which the City knew would cause a significant amount of additional surface water to discharge toward the Owner's Property despite the addition of an undersized and misshaped deflection berm. Damage to the Owner's Property was foreseeable to the City, and the Owner even expressed concern about the possibility of such damage.

15.

This additional volume of water discharged from the City's Drainage System on 14<sup>th</sup> Street eroded the soil under the Owner's driveway at the property, causing a large cave to form under the edge of the driveway and undermining a historic rock retaining wall supporting that edge of the driveway.

///

1 16.

2 In an attempt to prevent further property damage, the Owners installed 220 feet of sandbags  
3 on the perimeter of the Owners' Property. Although the sandbags mitigated some of the surface  
4 water discharged from the City's Drainage System on 14<sup>th</sup> Street, new water paths developed and  
5 caused additional damage to the Owners' Property.

6 17.

7 On June 20, 2022, the Owners delivered a Liability Incident Form to the City to formally  
8 document the City's wrongful conduct and how it caused this erosion and undermined the driveway  
9 of the Owners' Property.

10 18.

11 In July 2022, an agent of the City inspected the Owners' Property and the City's Drainage  
12 System on 14<sup>th</sup> Street. The City's agent issued a report on August 16, 2022. The City's agent  
13 observed that the City required Neighbor to install a sidewalk and gutter at the City's Drainage  
14 System on 14<sup>th</sup> Street, which altered the water drainage pattern in the immediate area. The City's  
15 agent concluded that water discharged from the City's Drainage System on 14<sup>th</sup> Street caused  
16 damage to topsoil, bark chips, retainage walls, sprinklers, paver bricks, boulders, landscape lighting,  
17 backfill and potentially a concrete driveway on Owners' Property.

18 19.

19 The City ultimately installed a berm at the perimeter of the Owners' Property. This berm is  
20 the same berm that Owner requested the City install in June 2022.

21 20.

22 Repairs, remediation, and stabilization are necessary to correct the property damage to the  
23 Owners' Property and to prevent the imminent and substantial risk of further property damage and  
24 further diminution in value. The Owners have suffered substantial losses and are entitled to recover  
25 damages in an amount to be proven at trial, currently estimated at \$600,000 for investigation, repair,

1 remediation, and stabilization; loss of enjoyment and use of the homes; and diminution in value.  
2 Plaintiffs reserve the right to amend damages as investigations proceed and further information  
3 becomes available.

4 **FIRST CLAIM FOR RELIEF**  
5 **(Inverse Condemnation)**

21.

6 The Owners re-allege and incorporate the paragraphs above.

7 22.

8 Defendant City intentionally mandated that the Neighbor's contractor make improvements to  
9 the City's Drainage System on 14<sup>th</sup> Street for the use and benefit of the public.

10 23.

11 The erosion, landslide, undermining of the Owners' Property and property damage to the  
12 Owners' Property was the natural and ordinary consequence of the City's mandate for the  
13 improvement of the City's Drainage System on 14<sup>th</sup> Street.

14 24.

15 The erosion, landslide, undermining of the Owners' Property and property damage to the  
16 Owners' Property has substantially interfered with the Owners' use and enjoyment of their property.

17 25.

18 The City's actions constituted a taking and appropriation of the Owners' private property for  
19 public purposes without payment of just compensation in violation of Article I, §18, of the Oregon  
20 Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

21 26.

22 Defendant City's taking and appropriation of the Owners' Property has caused the Owners'  
23 damages as set forth above.

24 ///

25 ///

1 27.

2 The Owners are also entitled to recover their costs, disbursements and attorney fees pursuant  
3 to ORS 20.085.

4 **SECOND CLAIM FOR RELIEF**  
5 **(Nuisance)**

6 28.

7 The Owners re-allege and incorporate the paragraphs above.

8 29.

9 The City mandated improvements to the City's Drainage System on 14<sup>th</sup> Street. During  
10 construction of the improvements, the Owners and Neighbor's contractor warned the City that such  
11 improvements would redirect a large volume of water onto the Owners' Property. Prior to final  
12 completion and approval of the improvements to the City's Drainage System on 14<sup>th</sup> Street, the  
13 Owners presented documentation of the harm to the Owners' Property caused by the improvements.  
14 Furthermore, the Owners suggested that the City install a berm to properly manage the surface water  
15 discharged by the City's Drainage System on 14<sup>th</sup> Street and onto the Owners' Property.

16 30.

17 The City ignored the warnings from the Owners and the Neighbor's contractor and inspected  
18 and approved the City's Drainage System on 14<sup>th</sup> Street while knowing that it would discharge a  
19 harmful volume of water onto the Owners' Property.

20 31.

21 As a result of the City's mandated improvements to the City's Drainage System on 14<sup>th</sup>  
22 Street, the City's improper inspection of the improvements, and the City's willful disregard of the  
23 substantial evidence presented by the Owners and Neighbor's contractor regarding the harm caused  
24 by the City's actions and inactions, the Owners' Property suffered erosion, a landslide, undermining  
25 of the driveway and property damage from the water discharged by the City's Drainage System on  
14<sup>th</sup> Street.

1 32.

2 As a foreseeable, direct and proximate result of the City's unreasonable interference with the  
3 Owners' use and enjoyment of land, the Owners have been damaged and are entitled to recover such  
4 damages as set forth in the paragraphs above.

5 **THIRD CLAIM FOR RELIEF**  
6 **(Negligence)**

33.

7 The Owners re-allege and incorporate the paragraphs above.

8 34.

9 The City had a duty to take reasonable care to ensure the improvements to City's Drainage  
10 System on 14<sup>th</sup> Street were done without damaging the Owners' Property or compromising the  
11 geotechnical stability of the Owners' property.

12 35.

13 Despite actual knowledge of the harm caused by the discharge of water from the City's  
14 Drainage System on 14<sup>th</sup> Street onto the Owners' Property, the City acted negligently by authorizing  
15 inspecting, and approving the improvements to the City's Drainage System on 14<sup>th</sup> Street, when the  
16 City knew such improvements were causing damage to the Owners' Property.

17 36.

18 As a direct and proximate result of the City's negligence, the Owners have suffered losses  
19 and property damage, and are entitled to recover the damages as set forth in the paragraphs above.

20 **PRAYER**

21 WHEREFORE, plaintiffs pray for the following relief:

22 1. On their First Claim for Relief, for a judgment against the City of West Linn for the  
23 damages set forth in the paragraphs above, with prejudgment and post-judgment interest thereon at  
24 the rate of nine percent (9%) per annum to the extent allowed by law, plus costs and disbursements  
25 incurred herein, plus their attorney fees pursuant to ORS 20.085, and

2. On their Second Claim for Relief, for a judgment against the City of West Linn for the damages set forth in the paragraphs above, with prejudgment and post-judgment interest thereon at the rate of nine percent (9%) per annum to the extent allowed by law, plus costs and disbursements, and

3. On their Third Claim for Relief, for a judgment against the City of West Linn for the damages set forth in the paragraphs above, with prejudgment and post-judgment interest thereon at the rate of nine percent (9%) per annum to the extent allowed by law, plus costs and disbursements; and

4. Any additional relief deemed appropriate by this Court.

Dated this 26<sup>th</sup> day of March 2024.

ALDRICH GOLDSTEIN, P.C.

*s/Daniel T. Goldstein*

Daniel T. Goldstein, OSB No. 012629

[dan@aldrichgoldstein.com](mailto:dan@aldrichgoldstein.com)

Christopher C. Grady, OSB 052694

[chris@aldrichgoldstein.com](mailto:chris@aldrichgoldstein.com)

*Attorneys for Plaintiffs Troy Buzalsky and Kathy Buzalsky*

TRIAL ATTORNEY: Daniel T. Goldstein, OSB No. 012629

3/29/2024 5:19 PM

24CV14114

**RETURN OF SERVICE**

State of Oregon

County of Clackamas

Circuit Court

Case Number: 24CV14114

Plaintiff(s):

**TROY BUZALSKY, et al.**

vs.

Defendant(s):

**CITY OF WEST LINN**

Received by Cumulus Legal Services, Inc. to be served on **City of West Linn**.

I, Elisha Treacy, do hereby affirm that on the **29th day of March, 2024** at **1:32 pm**, I:

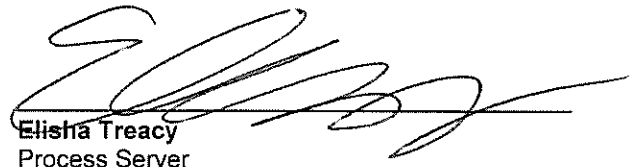
served a true and correct copy of the **Summons and Complaint** ("Service Documents"), by **personal service**, by delivering the Service Documents to **Lauren Breithaupt**, Finance Director, authorized to accept service on behalf of **City of West Linn**, at **22500 SALAMO ROAD, WEST LINN, OR 97068**.

**Description of Person Served:** Age: 40, Sex: F, Race/Skin Color: Caucasian, Height: 5'7", Weight: 170, Hair: Light Brown, Glasses: -

I certify that I am a competent person, 18 years of age or older, and a resident of the state of service, and that I am not a party to, nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise; that the person, firm or corporation served by me is the identical person, firm, or corporation named in the above-captioned action.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated: 3/29, 2024

  
Elisha Treacy  
Process Server

Cumulus Legal Services, Inc.  
P.O. Box 16913  
Portland, OR 97292  
(503) 567-9996

Our Job Serial Number: CMU-2024000218



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

TROY BUZALSKY, an individual; and KATHY  
BUZALSKY, an individual,

Plaintiffs,

v.

CITY OF WEST LINN, an Oregon municipality,

Defendant.

Case No. 24CV14114

SUMMONS

TO: **City of West Linn**  
City Manager  
West Linn City Hall  
22500 Salamo Road  
West Linn, OR 97068

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

**NOTICE TO THE DEFENDANT: READ THESE PAPERS  
CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

Daniel T. Goldstein

012629

ATTORNEY'S/AUTHOR'S NAME (TYPED OR PRINTED)

BAR NO. (IF ANY)

Aldrich Goldstein, P.C., 621 SW Morrison St. Ste 1050

Portland  
CITY

OR  
STATE

97205  
ZIP

(503) 226-7045  
PHONE

Daniel T. Goldstein

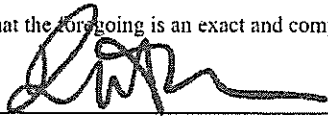
012629

TRIAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED)

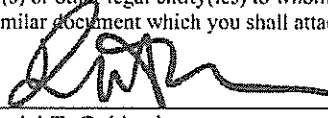
BAR NO.

STATE OF OREGON       )  
                                      ) ss.  
County of Multnomah    )

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

  
Daniel T. Goldstein, Attorney of Record for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

  
Daniel T. Goldstein, Attorney of Record for Plaintiff



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

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BUZALSKY, an individual,

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CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

Daniel T. Goldstein

012629

ATTORNEY'S/AUTHOR'S NAME (TYPED OR PRINTED)

BAR NO. (IF ANY)

Aldrich Goldstein, P.C., 621 SW Morrison St, Ste 1050

Portland  
CITY

OR  
STATE

97205  
ZIP

(503) 226-7045  
PHONE

Daniel T. Goldstein

012629

TRIAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED)

BAR NO.

STATE OF OREGON       )  
                                  ) ss.  
County of Multnomah    )

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

Daniel T. Goldstein, Attorney of Record for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

Daniel T. Goldstein, Attorney of Record for Plaintiff

3/26/2024 11:44 AM  
24CV14114

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

TROY BUZALSKY, an individual; and KATHY  
BUZALSKY, an individual,

Plaintiffs,

v.

CITY OF WEST LINN, an Oregon municipality,

Defendant.

Case No.

COMPLAINT  
(Inverse Condemnation; Nuisance;  
Negligence)

NOT SUBJECT TO MANDATORY  
ARBITRATION

Amount in Controversy: \$600,000

Fee Authority: ORS 21.160(1)(c)

JURY TRIAL REQUESTED

Plaintiffs allege as follows:

1.

Troy Buzalsky and Kathy Buzalsky are husband and wife ("Owners") and residents of Clackamas County, Oregon and owners of real property located at 1228 14<sup>th</sup> Street, in West Linn, Clackamas County, Oregon (the "Property").

2.

The Property is located in the Willamette Neighborhood of West Linn, Oregon, between the I-205 and the Tualatin River. The Willamette Neighborhood generally slopes downhill from the I-205 toward the Tualatin River. The Owners' Property is located at the bottom of the sloped Willamette Neighborhood and above the Willamette River.

3.

At all times material herein, Defendant City of West Linn ("City") was an Oregon municipality duly organized and existing under the laws of the state of Oregon. The City is primarily

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1 responsible for surface water management, street maintenance and street repair throughout the  
2 Willamette Neighborhood. The City is also the owner of a drainage pipe and other right-of-way  
3 improvements located on or about 14<sup>th</sup> Street just upslope from the Owners' Property (the "City's  
4 Drainage System on 14<sup>th</sup> Street"). The City's Drainage System on 14<sup>th</sup> Street discharges surface  
5 stormwater collected from the Willamette Neighborhood.

6 4.

7 The Owners' next-door neighbor (the "Neighbor") lived upslope from the Owners and  
8 adjacent to 14<sup>th</sup> Street. The Neighbor applied for a permit to partition his property into two lots. The  
9 City approved the Neighbor's permit application. As a condition of the approval, the City required  
10 the Neighbor to install and repair a sidewalk and gutter on part of the City's Drainage System on 14<sup>th</sup>  
11 Street.

12 5.

13 Prior to the Neighbor's project, surface water was directed to a ditch across 14<sup>th</sup> Street from  
14 the Owners' Property. However, as the contractor performed the work on the City's Drainage System  
15 on 14<sup>th</sup> Street as required by the City, the work began redirecting a large volume of surface water  
16 directly onto the Owners' Property.

17 6.

18 The Owners immediately warned the assistant engineer for the City's Public Works  
19 Department that water was now being redirected onto the Owners' Property. The City's engineer  
20 informed the Owners that the City had no plans to perform any repairs to 14<sup>th</sup> street to address the  
21 new and large volume of surface water from flowing onto the Owners' Property. The City  
22 representative informed the Owners that repairs to 14<sup>th</sup> Street were not a priority for the City in the  
23 foreseeable future. The City took no action in response to the Owner's warning about water intrusion  
24 onto Owners' Property.

25 ///

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1 7.

2 As the work continued on the City's Drainage System on 14<sup>th</sup> Street, the newly redirected  
3 water onto Owners' Property increased in volume. The Owner met with the City's right-of-way  
4 inspector during an inspection of the work on the City's Drainage System on 14<sup>th</sup> Street. The City's  
5 inspector agreed with the Owner that the project, as planned and required by the City, would not  
6 adequately protect the Owners' Property from the newly redirected surface water. However, the City  
7 took no action to prevent the new and large volume of surface water from discharging from the  
8 City's Drainage System on 14<sup>th</sup> Street and onto the Owners' Property.

9 8.

10 The Neighbor's contractor was also present for this meeting between the Owner and the  
11 City's right-of-way inspector. The Neighbor's contractor warned the City that even more surface  
12 water would soon be redirected from the City's Drainage System on 14<sup>th</sup> Street and onto the Owners'  
13 Property. The Neighbor's contractor stated that there was a broken and/or disconnected drainage pipe  
14 in the City's Drainage System on 14<sup>th</sup> Street. The Neighbor's contractor warned the City that the  
15 drainage pipe in the City's Drainage System on 14<sup>th</sup> Street would discharge even more surface water  
16 onto the Owners' Property if the drainage pipe was repaired.

17 9.

18 On or about May 9, 2022, the Owners hand-delivered a thumb drive to the City – and  
19 contemporaneously sent a Dropbox link to the City – containing photos and video demonstrating the  
20 Owners' concerns about excessive surface water discharging from the City's Drainage System on  
21 14<sup>th</sup> Street and onto the Owners' Property. The City received this communication before the broken  
22 and/or disconnected drainage pipe was repaired in the City's Drainage System on 14<sup>th</sup> Street. The  
23 Owners' communications to the City provided the City with a detailed description of the historical  
24 management of the surface water near the Owners' Property and how the work being performed on  
25 the City's Drainage System on 14<sup>th</sup> Street had now changed that historical flow, redirecting a large

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1 and harmful volume of surface water onto the Owners' Property.

2 10.

3 The City ignored the warnings given by the Owners and Neighbor's contractor. Instead, the  
4 City responded by offering the Owners sand and sand bags and took the position that surface water  
5 management was the Owners' responsibility. The City inspected and approved all work to the City's  
6 Drainage System on 14<sup>th</sup> Street with full knowledge that such approved work would newly discharge  
7 a large volume of water onto the Owners' Property.

8 11.

9 In June 2022, heavy rains began again in the Willamette Neighborhood. Surface water from  
10 the City's Drainage System on 14<sup>th</sup> Street discharged onto the Owners' Property as expected. Again,  
11 the Owners informed the City of the large volume of surface water discharging onto the Owners'  
12 Property from the City's Drainage System on 14<sup>th</sup> Street. On June 10, 2022, The Owners provided  
13 the City's Director of Public Works with an email that included additional photos and videos  
14 documenting the damage to the Owners' Property as a result of the discharge of water from the  
15 City's Drainage System on 14<sup>th</sup> Street. The Owner also suggested that the City mitigate its damages  
16 by installing an asphalt berm. The City had previously installed asphalt berms throughout the City to  
17 manage surface water drainage.

18 12.

19 The City's Public Works Director performed an investigation and provided a written  
20 response to the Owners once again offering free sand and sandbags. The City's Public Works  
21 Director confirmed that the City staff inspected and approved the work performed by the Neighbor's  
22 contractor on the City's Drainage System on 14<sup>th</sup> Street, which was also mandated by the City when  
23 approving the Neighbor's permit.

24 ///

25 ///

1 13.

2 However, the City's Public Works Director disclaimed any responsibility on the City's part  
3 for the newly directed surface water discharging from the City's Drainage System on 14<sup>th</sup> Street and  
4 onto the Owners' Property. Instead, the City's Public Works Director claimed that either the Owners  
5 or Neighbor were responsible for the management of the surface water discharging from City's  
6 Drainage System on 14<sup>th</sup> Street. The City's Public Works Director further stated that the City would  
7 not install an asphalt berm to control the excess surface water discharging onto the Owners' Property  
8 from the City's Drainage System on 14<sup>th</sup> Street. According to the City's Public Works Director,  
9 asphalt berms were not effective for management and drainage of surface water. The City's Public  
10 Works Director also confirmed that the City could have mandated that the Neighbor perform more  
11 comprehensive changes to the City's Drainage System on 14<sup>th</sup> Street, but chose not to mandate such  
12 changes.

13 14.

14 In addition to the actions above, the City also required the Neighbor's contractor to re-direct  
15 the flow of a drainage pipe uphill from the driveway to the Neighbor's property, which the City knew  
16 would cause a significant amount of additional surface water to discharge toward the Owner's  
17 Property despite the addition of an undersized and misshaped deflection berm. Damage to the  
18 Owner's Property was foreseeable to the City, and the Owner even expressed concern about the  
19 possibility of such damage.

20 15.

21 This additional volume of water discharged from the City's Drainage System on 14<sup>th</sup> Street  
22 eroded the soil under the Owner's driveway at the property, causing a large cave to form under the  
23 edge of the driveway and undermining a historic rock retaining wall supporting that edge of the  
24 driveway.

25 ///

1 16.

2 In an attempt to prevent further property damage, the Owners installed 220 feet of sandbags  
3 on the perimeter of the Owners' Property. Although the sandbags mitigated some of the surface  
4 water discharged from the City's Drainage System on 14<sup>th</sup> Street, new water paths developed and  
5 caused additional damage to the Owners' Property.

6 17.

7 On June 20, 2022, the Owners delivered a Liability Incident Form to the City to formally  
8 document the City's wrongful conduct and how it caused this erosion and undermined the driveway  
9 of the Owners' Property.

10 18.

11 In July 2022, an agent of the City inspected the Owners' Property and the City's Drainage  
12 System on 14<sup>th</sup> Street. The City's agent issued a report on August 16, 2022. The City's agent  
13 observed that the City required Neighbor to install a sidewalk and gutter at the City's Drainage  
14 System on 14<sup>th</sup> Street, which altered the water drainage pattern in the immediate area. The City's  
15 agent concluded that water discharged from the City's Drainage System on 14<sup>th</sup> Street caused  
16 damage to topsoil, bark chips, retainage walls, sprinklers, paver bricks, boulders, landscape lighting,  
17 backfill and potentially a concrete driveway on Owners' Property.

18 19.

19 The City ultimately installed a berm at the perimeter of the Owners' Property. This berm is  
20 the same berm that Owner requested the City install in June 2022.

21 20.

22 Repairs, remediation, and stabilization are necessary to correct the property damage to the  
23 Owners' Property and to prevent the imminent and substantial risk of further property damage and  
24 further diminution in value. The Owners have suffered substantial losses and are entitled to recover  
25 damages in an amount to be proven at trial, currently estimated at \$600,000 for investigation, repair,

1 remediation, and stabilization; loss of enjoyment and use of the homes; and diminution in value.  
2 Plaintiffs reserve the right to amend damages as investigations proceed and further information  
3 becomes available.

4 **FIRST CLAIM FOR RELIEF**  
5 **(Inverse Condemnation)**

6 21.

7 The Owners re-allege and incorporate the paragraphs above.

8 22.

9 Defendant City intentionally mandated that the Neighbor's contractor make improvements to  
10 the City's Drainage System on 14<sup>th</sup> Street for the use and benefit of the public.

11 23.

12 The erosion, landslide, undermining of the Owners' Property and property damage to the  
13 Owners' Property was the natural and ordinary consequence of the City's mandate for the  
14 improvement of the City's Drainage System on 14<sup>th</sup> Street.

15 24.

16 The erosion, landslide, undermining of the Owners' Property and property damage to the  
17 Owners' Property has substantially interfered with the Owners' use and enjoyment of their property.

18 25.

19 The City's actions constituted a taking and appropriation of the Owners' private property for  
20 public purposes without payment of just compensation in violation of Article I, §18, of the Oregon  
21 Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

22 26.

23 Defendant City's taking and appropriation of the Owners' Property has caused the Owners'  
24 damages as set forth above.

25 ///

///

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1 27.

2 The Owners are also entitled to recover their costs, disbursements and attorney fees pursuant  
3 to ORS 20.085.

4 **SECOND CLAIM FOR RELIEF**  
5 **(Nuisance)**

6 28.

7 The Owners re-allege and incorporate the paragraphs above.

8 29.

9 The City mandated improvements to the City's Drainage System on 14<sup>th</sup> Street. During  
10 construction of the improvements, the Owners and Neighbor's contractor warned the City that such  
11 improvements would redirect a large volume of water onto the Owners' Property. Prior to final  
12 completion and approval of the improvements to the City's Drainage System on 14<sup>th</sup> Street, the  
13 Owners presented documentation of the harm to the Owners' Property caused by the improvements.  
14 Furthermore, the Owners suggested that the City install a berm to properly manage the surface water  
15 discharged by the City's Drainage System on 14<sup>th</sup> Street and onto the Owners' Property.

16 30.

17 The City ignored the warnings from the Owners and the Neighbor's contractor and inspected  
18 and approved the City's Drainage System on 14<sup>th</sup> Street while knowing that it would discharge a  
19 harmful volume of water onto the Owners' Property.

20 31.

21 As a result of the City's mandated improvements to the City's Drainage System on 14<sup>th</sup>  
22 Street, the City's improper inspection of the improvements, and the City's willful disregard of the  
23 substantial evidence presented by the Owners and Neighbor's contractor regarding the harm caused  
24 by the City's actions and inactions, the Owners' Property suffered erosion, a landslide, undermining  
25 of the driveway and property damage from the water discharged by the City's Drainage System on  
14<sup>th</sup> Street.

1 32.

2 As a foreseeable, direct and proximate result of the City's unreasonable interference with the  
3 Owners' use and enjoyment of land, the Owners have been damaged and are entitled to recover such  
4 damages as set forth in the paragraphs above.

5 **THIRD CLAIM FOR RELIEF**  
6 **(Negligence)**

33.

7 The Owners re-allege and incorporate the paragraphs above.

8 34.

9 The City had a duty to take reasonable care to ensure the improvements to City's Drainage  
10 System on 14<sup>th</sup> Street were done without damaging the Owners' Property or compromising the  
11 geotechnical stability of the Owners' property.

12 35.

13 Despite actual knowledge of the harm caused by the discharge of water from the City's  
14 Drainage System on 14<sup>th</sup> Street onto the Owners' Property, the City acted negligently by authorizing  
15 inspecting, and approving the improvements to the City's Drainage System on 14<sup>th</sup> Street, when the  
16 City knew such improvements were causing damage to the Owners' Property.

17 36.

18 As a direct and proximate result of the City's negligence, the Owners have suffered losses  
19 and property damage, and are entitled to recover the damages as set forth in the paragraphs above.

20 **PRAYER**

21 WHEREFORE, plaintiffs pray for the following relief:

22 1. On their First Claim for Relief, for a judgment against the City of West Linn for the  
23 damages set forth in the paragraphs above, with prejudgment and post-judgment interest thereon at  
24 the rate of nine percent (9%) per annum to the extent allowed by law, plus costs and disbursements  
25 incurred herein, plus their attorney fees pursuant to ORS 20.085, and

2. On their Second Claim for Relief, for a judgment against the City of West Linn for the damages set forth in the paragraphs above, with prejudgment and post-judgment interest thereon at the rate of nine percent (9%) per annum to the extent allowed by law, plus costs and disbursements, and

3. On their Third Claim for Relief, for a judgment against the City of West Linn for the damages set forth in the paragraphs above, with prejudgment and post-judgment interest thereon at the rate of nine percent (9%) per annum to the extent allowed by law, plus costs and disbursements; and

4. Any additional relief deemed appropriate by this Court.

Dated this 26<sup>th</sup> day of March 2024.

ALDRICH GOLDSTEIN, P.C.

s/Daniel T. Goldstein

Daniel T. Goldstein, OSB No. 012629

dan@aldrichgoldstein.com

Christopher C. Grady, OSB 052694

chris@aldrichgoldstein.com

*Attorneys for Plaintiffs Troy Buzalsky and Kathy Buzalsky*

TRIAL ATTORNEY: Daniel T. Goldstein, OSB No. 012629

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

TROY BUZALSKY, an individual; and  
KATHY BUZALSKY, an individual,

Plaintiffs,

v.

CITY OF WEST LINN, an Oregon  
municipality,

Defendant.

Case No. 24CV14114

**NOTICE TO CLACKAMAS COUNTY  
CIRCUIT COURT CLERK AND  
ADVERSE PARTY OF FILING OF  
REMOVAL TO FEDERAL COURT**

**TO: CLERK OF CIRCUIT COURT OF THE STATE OF OREGON FOR  
CLACKAMAS COUNTY AND TO PLAINTIFFS AND THEIR ATTORNEYS  
OF RECORD, DANIEL T. GOLDSTEIN AND CHRISTOPHER C. GRADY  
AND ALDRICH GOLDSTEIN, P.C.:**

PLEASE TAKE NOTICE that a Notice of Removal of this action was filed in the United States District Court for the District of Oregon, Portland Division, on April 26, 2024. A copy of that Notice is attached as Exhibit A (without exhibits).

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1 PLEASE TAKE FURTHER NOTICE that, by the filing of such Notice and by the filing  
2 herein of this notice to state court of removal to federal court, this action has been removed from  
3 this Court to the United States District Court for the District of Oregon pursuant to 28 U.S.C. §§  
4 1331, 1367, 1441(a), and 1446, and this Court may proceed no further unless and until the case is  
5 remanded.

6 DATED: April 26, 2024.

7 HODGKINSON STREET MEPHAM, LLC

8 /s/ Ramon Henderson

9 By: \_\_\_\_\_  
10 Ramon B. Henderson III, OSB No. 183579  
11 rh@hs-legal.com  
12 (503) 222-1143  
13 (503) 222-1296 (fax)  
14 *Of Attorneys for Defendant City of West Linn*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of April, 2024, I served the foregoing DEFENDANT  
CITY OF WEST LINN'S NOTICE OF REMOVAL, on the following:

Daniel Goldstein  
Christopher Grady  
Aldrich Goldstein, PC  
621 SW Morrison St., Suite 1050  
Portland, Oregon 9720  
Email: [dan@aldrichgoldstein.com](mailto:dan@aldrichgoldstein.com)  
Email: [chris@aldrichgoldstein.com](mailto:chris@aldrichgoldstein.com)  
*Of Attorneys For Plaintiffs*

by the following indicated method(s):

☒ by **mailing** a full, true and correct copy thereof in a sealed first-class postage prepaid envelope, addressed to the foregoing attorney at the last known office address of the attorney, and deposited with the United States Post Office at Portland, Oregon on the date set forth above.

☒ by **emailing** a full, true and correct copy thereof, addressed to the foregoing attorney at the last known email address of the attorney on the date set forth above.

☐ by causing a full, true and correct copy thereof to be **hand delivered** to the attorney at the last known address listed above on the date set forth above.

☐ by sending a full, true and correct copy thereof via **overnight mail** in a sealed, prepaid envelope, addressed to the attorney as shown above on the date set forth above.

☐ by **faxing** a full, true and correct copy thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office on the date set forth above.

*/s/ Ramon Henderson*

\_\_\_\_\_  
Ramon Henderson